

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

JOSEPH C.,

Case No. 2:24-cv-0821-BNW

**Plaintiff,**

ORDER

V.

**COMMISSIONER OF SOCIAL SECURITY,**

## Defendant.

Presently before the Court is *pro se* plaintiff's application to proceed *in forma pauperis* (ECF No. 1), filed on April 29, 2024. Plaintiff filed a duplicate application at ECF No. 2, which will be denied as moot.

### **I.      *In Forma Pauperis* Application**

17 Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an  
18 inability to prepay fees and costs or give security for them. ECF No. 1. Accordingly, Plaintiff's  
19 request to proceed *in forma pauperis* will be granted. The Court will next screen the complaint.  
20 ECF No. 1-1.

## **II. Screening the Complaint**

#### **A. Standard of Review**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2).<sup>1</sup> In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may

<sup>1</sup> Although 1915 largely concerns prisoner litigation, § 1915(e) applies to all *in forma pauperis* proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners[.]”).

1 be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
 2 § 1915(e)(2).

3 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
 4 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
 5 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient  
 6 factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft*  
 7 *v. Iqbal*, 556 U.S. 662, 678 (2009). In considering whether the complaint is sufficient to state a  
 8 claim, all allegations of material fact are taken as true and construed in the light most favorable to  
 9 the plaintiff. *Wyler Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998)  
 10 (citation omitted). Although the standard under Rule 12(b)(6) does not require detailed factual  
 11 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell Atlantic Corp. v.*  
 12 *Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is  
 13 insufficient. *Id.* Unless it is clear that the complaint’s deficiencies could not be cured through  
 14 amendment, a plaintiff should be given leave to amend the complaint with notice regarding the  
 15 complaint’s deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

16 Even following the U.S. Supreme Court’s holdings in *Twombly* and *Iqbal*, the Court has  
 17 an “obligation . . . where the petitioner is *pro se* . . . to construe the pleadings liberally and to  
 18 afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.  
 19 2010) (internal quotations and citation omitted). But “the liberal pleading standard . . . applies  
 20 only to a plaintiff’s factual allegations.” *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989); *see also Bruns v. Nat'l Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)) (noting that a liberal construction may not  
 21 be used to supply an essential element of the claim absent from the complaint).

22 In the context of social security appeals, if a plaintiff’s complaint challenges a decision by  
 23 the Social Security Administration, the plaintiff must exhaust administrative remedies before  
 24 filing a lawsuit. *See* 42 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833  
 25 (9th Cir. 1989) (per curiam) (“Section 405(g) provides that a civil action may be brought only  
 26 after (1) the claimant has been party to a hearing held by the Secretary, and (2) the Secretary has  
 27

1 made a final decision on the claim"). Generally, if the SSA denies a claimant's application for  
2 disability benefits, the claimant may request reconsideration of the decision. If the claim is denied  
3 at the reconsideration level, a claimant may request a hearing before an administrative law judge  
4 ("ALJ"). If the ALJ denies the claim, a claimant may request review of the decision by the  
5 Appeals Council. If the Appeals Council declines to review the ALJ's decision, a claimant may  
6 then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

7 Once a plaintiff has exhausted administrative remedies, he may obtain judicial review of a  
8 SSA decision denying benefits by filing suit within 60 days after notice of a final decision. *Id.*  
9 An action for judicial review of a determination by the SSA must be brought "in the district court  
10 of the United States for the judicial district in which the plaintiff resides." *Id.* The complaint  
11 should state the nature of plaintiff's disability, when plaintiff claims he became disabled, and  
12 when and how he exhausted his administrative remedies. The complaint should also contain a  
13 plain, short, and concise statement identifying the nature of plaintiff's disagreement with the  
14 determination made by the SSA and show that plaintiff is entitled to relief.

15 A district court can affirm, modify, reverse, or remand a decision if plaintiff has exhausted  
16 his administrative remedies and timely filed a civil action. However, judicial review of the  
17 Commissioner's decision to deny benefits is limited to determining: (a) whether there is  
18 substantial evidence in the record as a whole to support the findings of the Commissioner, and (b)  
19 whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*  
20 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

21 **B. Analysis**

22 This Court notes that plaintiff has filed multiple complaints filed. The rules require that all  
23 of plaintiff's claims be contained in *one* complaint. Courts cannot refer to multiple complaints  
24 and piece together the different arguments that are being presented. As a result, this Court will  
25 dismiss plaintiff's complaint without prejudice and allow him to amend his complaint.

26 As explained above, plaintiff is reminded that the judicial review of the Commissioner's  
27 decision to deny benefits is limited to determining: (a) whether there is substantial evidence in the  
28 record as a whole to support the findings of the Commissioner, and (b) whether the correct legal

1 standards were applied. As such, plaintiff should keep that in mind when presenting his  
2 arguments.

3 Plaintiff is also advised that if he chooses to file an amended complaint, the original  
4 complaint(s) no longer serves any function in this case. As such, if he files an amended  
5 complaint, each claim must be alleged sufficiently. The court cannot refer to a prior pleading or to  
6 other documents to make his amended complaint complete. The amended complaint must be  
7 complete in and of itself without reference to prior pleadings or to other documents.

8 **IT IS THEREFORE ORDERED** that:

9       1. Plaintiff's request to proceed *in forma pauperis* (ECF No. 1) is  
10 GRANTED. Plaintiff will not be required to pay the filing fee of \$405.00.

11       2. Plaintiff is permitted to maintain this action to conclusion without the  
12 necessity of prepayment of any additional fees or costs or giving security for them. This Order  
13 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at  
14 government expense.

15       3. the deadline to file an amended complaint is June 3, 2024. Failure to so  
16 may result in this action being dismissed.

17       4. The Clerk of Court must file one of the complaints (ECF No. 1-1).

18       5. The Clerk of Court shall provide notice of this action to the Commissioner  
19 pursuant to Rule 3 of the Supplemental Rules for Social Security.

20       6. From this point forward, Plaintiff must serve on Defendant or, if  
21 appearance has been entered by an attorney, on the attorney, a copy of every pleading, motion, or  
22 other document submitted for consideration by the Court. Plaintiff must include with the original  
23 paper submitted for filing a certificate stating the date that a true and correct copy of the  
24 document was personally served or sent by mail to Defendant or counsel for Defendant. The  
25 Court may disregard any paper received by a district judge or magistrate judge that has not been  
26 filed with the Clerk, and any paper received by a district judge, magistrate judge, or the Clerk that  
27 fails to include a certificate of service.

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1 DATED: May 2, 2024  
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BRENDA WEKSLER  
UNITED STATES MAGISTRATE JUDGE